

NO. MMX FA-22-5014533S

In re NICKOLA CUNHA

: SUPERIOR COURT  
:  
: J.D. OF MIDDLESEX AT  
: MIDDLETOWN  
:  
: TRIAL DOCKET – MIDDLETOWN  
:  
: APRIL 27, 2022

### Memorandum of Decision

This court disbarred Nickola Cunha on January 25, 2022. On January 28, 2022, to implement its order, the court appointed a trustee to protect the interests of Ms. Cunha's former clients. In the appointing document, the court ordered Ms. Cunha within 72 hours of the order to provide the trustee with:

1. A written list of active/pending files to include the client's name, address, telephone number, email address, description of the matter, amount of the retainer paid (if any), itemization of all billing identifying any balance remaining, and whether there are any scheduled court dates, statute of limitations, deadlines, or other activity needing immediate attention.
2. All active/pending files identified.
3. A list of all clients' funds, IOLTA and/or fiduciary accounts maintained by Nickola Cunha, including the name of the banking institution and account number. Nickola Cunha shall also provide the trustee with all remaining original checks for each account.
4. Her contact information including phone number(s) and email address.

The court further ordered Ms. Cunha:

1. not deposit to, disburse any funds from, withdraw any funds from, or transfer any funds from, any clients' funds, IOLTA, or fiduciary accounts.
2. to comply with Practice Book § 2-47B (Restrictions on the activities of Deactivated Attorneys).

Copies mailed to: Patis & Smith; Office of the Chief  
Disciplinary Counsel; Charles & Boni-Vendola; Reporter of Judicial Decisions  
By: Evan Knowlton RFD  
on 4/27/2022

3. to cooperate with the Trustee in all respects.

The order warned Ms. Cunha that, if she didn't comply with the order, it would be considered further misconduct and may subject her to punishment for contempt of court.

She hasn't complied. But Ms. Cunha, through her lawyer says the court is powerless to do anything about it. Ms. Cunha claims that the moment the court disbarred her it lost jurisdiction over her. But if the court had jurisdiction to make its order in the first place, it has jurisdiction to carry it out. Ms. Cunha's cites no authority for her form-over-substance distinction. Therefore, the court will spend no more time explaining why it rejects it. This court has subject matter jurisdiction to carry out its disbarment of Nickola Cunha, including its work to protect Ms. Cunha's former clients.

The court has reason to believe they need protecting. On February 2, 2022, five days after the court ordered her not to withdraw money from her IOLTA client's fund account, Ms. Cunha took for her own use \$30,000 from that account.

On April 18, 2022, the court heard evidence about Ms. Cunha's activities. She claimed she had no notice of the court's order when she took the money, but her testimony was firmly contradicted by the trustee, Attorney Corinne Boni-Vendola. Ms. Boni-Vendola has known Ms. Cunha for years and testified that she has always maintained a good working relationship with her. Thus, it was more convincing when Ms. Boni-Vendola testified that she not only sent Ms. Cunha the order but discussed it with her in general and her obligation not to take client's funds in particular. Ms. Boni-Vendola believed Ms. Cunha had read the order because Ms. Cunha protested the order,

claiming she was owed money by clients. This discussion was on January 31, 2022—two days before Ms. Cunha went to the bank and took her client's cash.

Ms. Cunha by contrast was not credible. She admitted she got the order in the mail and read it in late February. Yet she variously said she didn't remember what she talked about with Ms. Boni-Vendola and said that she absolutely did not discuss the bar on withdrawals with her. At another point she said she didn't read whatever it was Ms. Boni-Vendola sent her—the order that is.

Ms. Cunha also complained that she was depressed and not feeling well at the time in connection with an unnamed and undocumented “emergency surgery” she had a month before the events in question. Yet she didn't say she might have misunderstood. Instead, she darted around claiming at one point that she had no idea about the order, at another saying she didn't remember her conversations, and at another point taking the Fifth Amendment. She struck the court as someone trying to avoid the truth but doing a very bad job of it.

From what Ms. Cunha said and the way she said it, the court doesn't believe her and believes Ms. Boni-Vendola, instead. The court concludes that clear and convincing evidence shows that Ms. Cunha was unequivocally ordered not to take her clients' money, knew about the order, and willfully took it anyway. She had a motive to take it too. Shortly after taking the money, she hired an attorney. She certainly needs one.

Ms. Cunha is without doubt in contempt of the court's order prohibiting her from taking her clients' money, but she may have done something worse. She may have taken it without a legal right to take it. She may have stolen it. The question of her right to

these clients' funds was raised at the April 18, 2022 hearing. She asked for more time, saying she had documents that would prove she had such a legal right.

Ultimately, the court convened the hearing again on April 22, 2022 to give Ms. Cunha the chance she asked for. She offered no documents into evidence. She didn't claim she had any statements of account, had rendered any bills, or had any client acknowledgement of her right to the money in question. Instead, she gave a rambling account of having done a bunch of work for the client in question on various cases. She recited a list of around \$6,000 in expenses she supposedly incurred on behalf of this client but didn't offer the list or any other document in evidence.

Then she offered something even more telling. Ms. Cunha said that before she was disbarred she had discussed her potential disbarment with the client at issue. She warned the client if she did get disbarred, the client would have to get her money from a trustee.

So much for Ms. Cunha thinking she had a right to take the money after being disbarred. And if the money was owed to Ms. Cunha as she claims, what business would her client have getting it at all? It was as though she got her story mixed up again. She was suddenly aware of the trustee and the ban on taking money even *before* she was disbarred and even *before* a trustee was appointed. And if this is so, how can she continue to claim as she does that the court didn't give her adequate notice that she might get disbarred? Now she says she saw it coming and even warned her client about the potential consequences.

And what about Ms. Cunha's promise on April 22nd that she would produce documents vindicating herself on April 25th? She produced nothing, and this sounded

familiar to the court. During the hearing that prompted the disbarment proceeding she kept promising she had documents showing a conspiracy of pedophile-protecting Jews in the court system. She never produced these either. At least she is consistent. She is a stranger to truth.

Still, the court isn't ready to conclude Ms. Cunha stole her clients' money. The trustee and the chief disciplinary counsel aren't asking the court to do this just yet. Instead, the chief disciplinary counsel requested, and the court orders, an audit of Ms. Cunha's dealing with her clients' funds in general and the \$30,000 in particular. The audit is to be completed and a report filed with the court no later than August 1, 2022. The chief disciplinary counsel is authorized in conducting the audit to subpoena any necessary witnesses and documents and to take depositions.

One purpose of ordering the audit is to direct the chief disciplinary counsel—in cooperation with the trustee—to determine if Ms. Cunha stole her client's \$30,000. If she did, she will be in a lot more trouble. The court warned her that what she said in these proceedings might be used in criminal proceedings. But that's only part of her problem. If she stole the money, Practice Book §2-53 bars her from reinstatement, not for five years, but for twelve years. Still, conclusions along those lines—if warranted at all—will have to wait for another day.

For now, we know Ms. Cunha took money she was ordered not to take. We also know that, with one exception, and months to do it, that Ms. Cunha hasn't provided telephone and email information to the trustee so that she may contact Ms. Cunha's clients and ensure their protection.

Ms. Cunha was ordered to provide this information along with complete documentation of whom she represented and what money she had in trust. As she did at the first hearing, at the second hearing held on April 22, 2022, she said she had everything and could produce it by Monday, April 25, 2022. It is thus undisputed that Ms. Cunha has willfully disobeyed the clear orders of the court to turn over client information to the trustee. The court finds her in contempt and will take additional steps to secure compliance.

For violating the court's order against taking clients' funds, the court sanctions Ms. Cunha \$1,000. She must pay this sum to the clerk of the court no later than June 6, 2022. The court wishes to be clear. This monetary sanction is for disobeying the court's order forbidding withdrawals from her clients' funds—assuming she earned the money. It is not in any way a sanction for taking funds she had no right to take—for larceny that is. That is a separate matter, yet undecided. It is not being adjudicated or punished for here.

For failing to provide the client information specified in the order above, the court orders Ms. Cunha to appear in person on May 11, 2022 at 10:00 a.m. at the judicial district courthouse, 1 Court Street, Middletown, Connecticut. If she hasn't provided the information sought before this hearing, the court will consider other steps to ensure compliance, including possible additional monetary sanctions, incarceration to secure compliance, or both. If, before the hearing date, the trustee is satisfied that Ms. Cunha has given her the information ordered, the trustee may notify the case flow coordinator, and the hearing will be cancelled.

BY THE COURT

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Moukawsher, J.